

## Update: Traffic Benchbook— Revised Edition, Volume 2

### CHAPTER 2

#### Procedures in Drunk Driving and DWLS Cases

#### 2.9 General Sentencing Considerations for §625 and §904 Offenses

##### F. Applying the Sentencing Guidelines

To the September 2003 update to pages 2-51 and 2-52, add new subsection (2) and the case summary following it, as indicated below:

##### 2. Sentence Departures

MCL 769.34(2)(a) contains a provision expressly applicable to sentencing situations involving violations of the Michigan Vehicle Code (MVC). In relevant part, MCL 769.34(2)(a) states:

“If the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the Michigan vehicle code [] authorizes the sentencing judge to impose a sentence that is less than that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure under this section.”

In *People v Hendrix*, \_\_\_ Mich App \_\_\_ (2004), the defendant was convicted of OUIL-3d and DWLS (second offense). The prosecutor requested that the defendant be sentenced to prison—to the jurisdiction of the department of corrections—for one to five years as authorized by MCL 257.625(8)(c)(i). *Hendrix, supra*, \_\_\_ Mich App at \_\_\_. The statutory sentence guidelines as calculated for the defendant resulted in a recommended minimum range of 0 to 11 months. *Hendrix, supra*, \_\_\_ Mich App at \_\_\_. The trial court sentenced the defendant to one year probation to be served in the county jail. *Hendrix, supra*, \_\_\_ Mich App at \_\_\_.

The Michigan Court of Appeals first denied the prosecutor's application for leave to appeal but the Michigan Supreme Court remanded the case to the Court of Appeals as if on leave granted. The Supreme Court specifically instructed the Court of Appeals

“to address whether MCL 257.625(8)(c) ‘mandates a minimum sentence for an individual sentenced to the Department of Corrections’ within the meaning of MCL 769.34(2)(a), as well as the applicability of MCL 769.34(4)(a) under these circumstances.” Court of Appeals order dated July 8, 2004, in which the Court vacated its previous opinion and issued a new opinion in *People v Hendrix*.

In its new opinion, the Court of Appeals concluded that the sentencing alternatives provided in MCL 257.625(8)(c)(i) and (ii) for OUIL-3d offenders reflected the sentencing scheme referenced by MCL 769.34(2)(a). Under MCL 257.625(8)(c), a trial court is mandated to impose a fine *and* one of two sentence alternatives provided by the statute. In addition to the mandatory fine imposed (from \$500.00 to \$5,000.00 at the court's discretion), the court is required to sentence the defendant to the jurisdiction of the Department of Corrections (for a minimum of one year and a maximum of five years) *or* to sentence the defendant to probation with imprisonment in the county jail (for a minimum of 30 days and a maximum of one year) and community service (for a minimum of 60 days and a maximum of 180 days). MCL 257.625(8)(c).

The *Hendrix* Court explained that the sentencing court has discretion to choose between the two alternatives presented in the MVC, each of which had a mandatory minimum term associated with that alternative. *Hendrix, supra*, \_\_\_ Mich App at \_\_\_. The Court further explained that the MVC alternatives were clearly addressed by the statutory language in MCL 769.34(2)(a), which authorized the trial court to impose a sentence *less than* the minimum sentence mandated by the MVC *if* the MVC mandated a minimum sentence for a defendant sentenced to the jurisdiction of the Department of Corrections. *Hendrix, supra*, \_\_\_ Mich App at \_\_\_. According to the plain language of MCL 769.34(2)(a), a sentence that exceeded the range recommended by the guidelines is not a departure if the sentence is less than the minimum sentence mandated for a defendant sentenced to the jurisdiction of the Department of Corrections. *Hendrix, supra*, \_\_\_ Mich App at \_\_\_.

In *Hendrix*, the trial court properly sentenced the defendant according to the alternative available under MCL 257.625(8)(c)(ii)—to one year of probation to be served in the county jail—a sentence that exceeded the defendant's guidelines range of 0 to 11 months, but which fell below the mandatory minimum term of one year if the defendant had been sentenced to the jurisdiction of the Department of Corrections. The *Hendrix* Court further concluded that MCL 769.34(4)(a), which requires a “substantial and compelling” reason to depart from a minimum sentence range, did not apply to the defendant's sentence. *Hendrix, supra*, \_\_\_ Mich App at \_\_\_ n 1. Without elaboration, the Court held that MCL 769.34(4)(a) did not apply

because the defendant's sentence was governed by the language in MCL 769.34(2)(a), which specifically addressed sentences under the MVC.